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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the matter of:

Annual Assessment of the Status of
Competition in the Market for the
Delivery of Video Programming

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CS Docket No. 95-61

COMMENTS

The Motion Picture Association of America, Inc. ("MPAA") hereby submits its comments on the Commission's Notice of Inquiry ("Notice")^{1/} in the above-referenced proceeding.

The Notice seeks comments regarding "the current status of competition for the delivery of video programming" in order to prepare its 1995 annual Report to Congress.^{2/} Thus, one key issue is the impact of "existing and potential competitors to cable systems, and the prospects for increased competition in the market for the distribution of video programming."^{3/}

The Commission's 1994 Report to Congress noted that "some inroads had been made" by alternative video programming providers in many markets.^{4/} For example:

Cable overbuilds existed in approximately 50 markets across the U.S.^{5/}

^{1/} Notice of Inquiry, CS Docket No. 95-61, FCC 95-186 (released May 24, 1995).

^{2/} Id. at ¶ 5.

^{3/} Id. at ¶ 6.

^{4/} Id. at ¶ 14, citing Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, First Report, CS Docket No. 94-48, 9 FCC Rcd 7442 (1994) ("1994 Competition Report").

^{5/} 1994 Competition Report at ¶¶ 55-60.

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- Direct Broadcast satellite ("**DBS**") service became available in 1994.^{6/}
- C-band home satellite dishes ("**HSDs**") were in use in 4 million households.^{7/}
- Multipoint multichannel distribution service ("**MMDS**" or "wireless cable") had increased to 143 systems serving 550,000 subscribers.^{8/}
- Satellite master antenna ("**SMATV**") systems grew in penetration, with 3,000 to 4,000 systems serving approximately 1 million subscribers as of August 1994.^{9/}
- Video dialtone ("**VDT**") service emerged, after the Commission authorized five technical or market trials and one permanent VDT service.^{10/}
- **Electric utilities** had expressed interest as distributors of video programming.^{11/}
- **Broadcast television** provided direct competition to cable television, both in cable and non-cable households.^{12/}

As the following information demonstrates, these technologies currently provide increasing competition in the video programming delivery marketplace. MPAA's members^{13/} produce substantial amounts of the programming that is distributed in the United States. Accordingly, MPAA supports increased competition in the video programming delivery market, which results

^{6/} Id. at ¶¶ 62-70.

^{7/} Id. at ¶¶ 171-177.

^{8/} Id. at ¶¶ 78-90.

^{9/} Id. at ¶¶ 91-96.

^{10/} Id. at ¶¶ 103-120.

^{11/} Id. at ¶¶ 131-133,

^{12/} Id. at ¶¶ 97-102.

^{13/} MPAA's member companies include Buena Vista Pictures Distribution, Inc.; Sony Pictures Entertainment Inc.; Metro-Goldwyn-Mayer Inc.; Paramount Pictures Corporation; Twentieth Century Fox Film Corporation; Universal Studios, Inc.; Warner Bros., a Division of Time Warner Entertainment Company, L.P.; and Turner Pictures.

in more viewing outlets and options for consumers. MPAA is thus encouraged by the growing strength and popularity of these video programming delivery services, especially since the evidence indicates that the pace of such growth is continuing to accelerate.

Cable Overbuilds

Section 621(a) of the 1992 Cable Act "prohibits the unreasonable denial of a competitive franchise."^{14/} The 1992 Cable Act also permits cities to grant themselves cable franchises,^{15/} and many have been seriously considering this idea.^{16/}

Furthermore, the Commission has granted several applications to telephone companies ("telcos") to overbuild cable systems.^{17/} Moreover, local exchange telephone carriers "LECs" may now apply for authorization to overbuild cable systems in their local telephone service areas without a waiver of Section 214 of the Communications Act,^{18/} and have begun to do so.^{19/}

In 1995, another competitive barrier was broken when Cablevision Systems Corp. became one of the first established cable operators to announce plans to overbuild several cable operators in New Jersey.^{20/} Likewise, Hartford, Connecticut faces an overbuild battle between Tele-

^{14/} Notice at ¶ 29, citing 47 U.S.C. § 541(a).

^{15/} Id. at § 541(c).

^{16/} See, e.g., Multichannel News, February 6, 1995 at 31.

^{17/} See, e.g., Bentleyville Tel. Co., file no. W-P-C-6817 (Dom. Fac. Div. released May 17, 1995) (app. for review pending).

^{18/} FCC Public Notice, DA 95-722 (released April 3, 1995).

^{19/} See, e.g., MEBCOM, Inc. d/b/a MEBTEL Communications, file no. W-P-C-7068 (filed April 6, 1995).

^{20/} See Michael Burgi, "Building Blocks; Cable Companies Battle over Subscribers," Mediaweek, February 6, 1995 at 14.

Communications, Inc. and FiberVision, a privately held concern started by former cable executives.^{21/} All of these developments indicate that cable overbuilds are becoming more common.

DBS and HSD

DBS subscribership now numbers over one million.^{22/} This figure is expected to more than double by the end of 1995.^{23/} DBS is desirable because it "offers 174 channels, CD-quality audio, and laser-disc-level video."^{24/} Thus, "virtually any subscriber or potential subscriber to enhanced basic services has a choice of providers."^{25/}

Further developments portend continued DBS growth. DBS "is now being offered with expanded pay-per-view capability."^{26/} Additionally, two new DBS services are expected to launch in 1995.^{27/} As a result, estimated DBS subscribership by the end of this decade is as high as 13 million viewers.^{28/}

^{21/} Id.

^{22/} Notice at ¶ 39 (citations omitted).

^{23/} Mike Mills, "Democrats Face Hard Fight in Defending Cable Rate Curbs," The Washington Post, May 16, 1995 at E1 (citing estimate by Paul Kagan Associates, Inc.)

^{24/} Gene Koprowski, "New Satellite-TV Products Upstage Cable," Investor's Daily, May 12, 1995 at A1.

^{25/} Robert Corn-Revere, "Cable Act Reform: Deja Vu All Over Again," Broadcasting & Cable, April 3, 1995 at 81.

^{26/} J. Allen Davis, "So You Think You Want to Be a Video Star?" Telephony, March 20, 1995 at 129.

^{27/} Notice at ¶ 39.

^{28/} "Consumer Demand for Video Services," Satellite Communications, April 1995 at 20.

As the Notice indicates, there were 4 million C-band HSDs in use nationwide as of one year ago.^{29/} According to Glenn Gurgiolo, president of Liberty Satellite Sports, C-band systems are selling at about 60,000 units per month, double the rate that had been anticipated.^{30/} According to Ed Frazier, president of Tele-Communications, Inc.'s affiliate, Liberty Sports, these dishes are desirable "because of what they offer. . . . You get 500 channels and news feeds and all kinds of things from all over the world."^{31/} Thus, both DBS and HSD make up a direct-to-home satellite dish market whose acceptance continues to mount.

MMDS

The 1992 Cable Act guarantees wireless cable operators access to cable programming.^{32/} Moreover, "[s]ince release of the 1994 Competition Report, the Commission has taken actions designed to eliminate the backlog of MMDS license applications and to streamline the licensing process."^{33/} These actions have had dramatic results. Since the Commission's 1994 Competition Report was released, several large telcos have announced plans to invest in or

^{29/} Notice at ¶ 14.

^{30/} Larry Stewart, "Little Dish Could Force Cable Into Unconventional Changes," Los Angeles Times, December 2, 1994 at C3.

^{31/} Id.

^{32/} 47 U.S.C. § 548(c)(2).

^{33/} Notice at ¶ 30.

purchase MMDS operators.^{34/} Lending institutions, including Chase Manhattan Corp., have invested millions of dollars in the industry.^{35/}

As a result of this favorable regulatory and investment environment, wireless cable penetration has grown to 170 systems serving approximately 700,000 subscribers,^{36/} an increase of 18.9% in systems and 27.3% in subscribers in less than one year. One wireless operator, ACS, has climbed from 24,000 subscribers to 82,000 in the last year.^{37/}

Finally, wireless cable operators will be able to use their new capital to invest in digital equipment that could increase system channel capacity from 33 to as high as 250.^{38/} Thus, there is every reason to believe that the recent rapid growth of MMDS will continue.

SMATV

As of August 1994, there were approximately 1 million SMATV subscribers nationwide.^{39/} This number grew to an estimated 1.09 million subscribers by the end of February 1995.^{40/} Moreover, the Commission recently removed a barrier to entry by SMATV

^{34/} See, e.g., Notice at n.58 (Pacific Telesis planned purchase of Cross-Country Wireless); *id.* at n.60 (citing Kent Gibbons, "Wireless Op Receives \$ 100M from Baby Bells, Multichannel News, April 3, 1995 at 58) (\$ 100 million investment by Bell Atlantic and NYNEX in CAI Wireless); Rich Brown, "MMDS (wireless cable): A Capital Ideal," Broadcasting & Cable, May 1, 1995 at 16 (People's Choice TV Corp agreed in late April 1995 to a \$ 10.3 million acquisition of the capital stock of wireless operator Broadcast Cable, Inc.)

^{35/} Rich Brown, supra, at 16.

^{36/} *Id.* at 18.

^{37/} Joe Flint, "Telcos Fly High on Wireless," Variety, April 24-30, 1995 at 19.

^{38/} Rich Brown, supra, at 18.

^{39/} Notice at ¶ 14.

^{40/} Paul Kagan Associates, Inc., Marketing New Media, February 20, 1995.

operators, by eliminating the prohibition on cable operator acquisitions of SMATV systems and thus providing a market "exit strategy" for SMATV operators.^{41/} Not surprisingly, therefore, SMATV subscribership is expected to increase to 1.16 million by the end of February 1996,^{42/} and shows no sign of slowing.

Video Dialtone

The Commission has continued to grant VDT applications for trials and commercial service since it released the 1994 Competition Report. Thus far, the Commission has granted approximately 20 VDT applications. Roughly 16 additional applications are pending. Additionally, the Commission recently approved the first commercial VDT tariff, permitting Bell Atlantic to market VDT service in Dover Township, NJ.^{43/}

VDT has also benefitted from recent court decisions which have allowed telcos to provide video programming in their local telephone service areas.^{44/} The Commission has followed suit.^{45/} Additionally, in 1995, the Commission began granting LECs the authorization to

^{41/} Notice at n.69 (citation omitted).

^{42/} Marketing New Media, *supra*.

^{43/} Order, Transmittal Nos. 741, 786 (released June 9, 1995).

^{44/} Chesapeake & Potomac Tel. Co. of Virginia v. U.S., 42 F.3d 181 (4th Cir. 1994); U.S. West, Inc. v. U.S., 48 F.3d 1092 (9th Cir. 1994); BellSouth Corp. V. U.S., 868 F.Supp. 1335 (N.D. Ala. 1994); Ameritech Corp. V. U.S., 867 F.Supp. 721 (N.D. Ill. 1994); NYNEX Corp. v. U.S., 153 F.R.D. 1 (D. Me. 1994); United States Telephone Ass'n, et al. v. U.S., Civ. No. 1:94CV01961 (D.D.C. February 14, 1995).

^{45/} FCC Public Notice, DA 95-722, released April 3, 1995.

provide video programming over their VDT facilities.^{46/} The Commission is also considering rule changes that would permit telcos to construct and operate cable systems without subjecting them to Section 214 scrutiny.^{47/} As a result of activity by the Commission and the courts, the competitive environment for VDT is extremely favorable, and, at a minimum, the steady growth of efforts by telcos to offer video programming services, whether via VDT or through traditional cable systems, can be expected to continue.

Electric Utilities

Many electric utilities are interested in becoming video programming distributors.^{48/} Their connection by wire to virtually all households in the U.S. gives them a significant advantage. Additionally, utility companies have been experimenting with advanced communications technologies, including demand-side management programs that use two-way communications with customers,^{49/} and fiber optic cable that can carry video programming.^{50/} Other utilities are experimenting with the interactive computer controlled "SHUbox," which can be used to order video programming on demand.^{51/} Because of the utilities' size, access to

^{46/} The Chesapeake and Potomac Telephone Co. of Virginia, FCC 95-15 (released January 20, 1995); BellSouth Telecommunications, Inc., DA 95-181 (Com. Car. Bur. released February 8, 1995).

^{47/} FCC Public Notice, DA 95-665 (released April 3, 1995).

^{48/} Notice at ¶ 62.

^{49/} See, e.g., James H. McGrew, "Electric Utilities: Steering Clear on the Information Highway," Fortnightly, May 15, 1995 at 43.

^{50/} See, e.g., id.; Ross Kerber, "Beeline to Anaheim? City Hopes to Cash in on a New Fiber-Optic Loop," Los Angeles Times, May 14, 1995 at D3.

^{51/} See, e.g., Bob Boyle, "Is it Friend or Foe," Broadband Week, April 17, 1995 at 41.

homes, and experimentation with new technologies. it is expected that they will soon become powerful players in the video programming delivery marketplace.

Broadcast Television

The number of broadcast stations continues to increase -- a fourth broadcast network has emerged, and in recent months two new networks have started program distribution.^{52/} Moreover, most cable television subscribers spend a significant amount of time viewing television broadcast programming.^{53/} From a national perspective, viewing of NBC, CBS and ABC has dropped 45% since 1970; Recently, however, the share of the national prime-time audience garnered by the four established networks, including Fox, has been increasing.^{54/} Advertising revenue for the three more established networks is also growing -- up 7.5% in 1994, and a projected 4%-5% for 1995.^{55/} Combined with broadcasters' ability to reach almost all television households,^{56/} these factors indicate that "traditional networks will continue to claim a large share of the audience."^{57/}

^{52/} Notice at ¶ 56.

^{53/} Id.

^{54/} John Kimelman, "Revenge of the NETS!: The Bullies of Broadcasting are Back," Financial World, April 11, 1995 at 18.

^{55/} Id.

^{56/} Id.

^{57/} Danny Heitman, "Setting the Odds; Executives Gauge Chances of New Networks," The Advocate, April 19, 1995 at 1C.

VII. CONCLUSION

One year ago, the Commission listed numerous alternative video programming providers that were "making inroads" into the market for delivery of video programming. Since then, market forces, Commission action and court decisions have combined to significantly strengthened the competitive profile of each of these services. All available evidence indicates that, to varying degrees, these services provide considerable competition at this time, and will continue to grow in the future, thereby lowering prices and increasing viewing options for the public. MPAA applauds and encourages this competitive development.

Respectfully submitted,

**MOTION PICTURE ASSOCIATION
OF AMERICA, INC.**

By:


Bonnie J.K. Richardson

June 30, 1995